

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

**PCI INTERNATIONAL CONSULTANTS, * CIVIL NO. 11-0762
INC**

VERSUS * JUDGE MELANÇON

**GLAVOR AND FOOD INGREDIENTS, * MAGISTRATE JUDGE HILL
INC, ET AL**

JUDGMENT

Defendants Activ International, Inc. and Flavor And Food Ingredients, Inc. d/b/a Summit Hill Flavors (“FFI/SHF”) filed motions to dismiss this action for failure to state a claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for lack of personal jurisdiction, pursuant to Rule 12(b)(2). *R. 9; 10*. The motions were referred to United States Magistrate Judge C. Michael Hill for Report and Recommendation. The record indicates that plaintiff, PCI International Consultants, Inc. filed no opposition to either motion.

In his Report and Recommendation, the Magistrate Judge granted defendants’ motions, finding that PCI: (1) failed to state a claim against defendants under § 1 of the Sherman Act and the Louisiana Antitrust Act, as the Complaint and record demonstrated that defendants “are wholly owned subsidiaries of a single parent company, Vamara Holdings, S.A., [*R. 1, ¶ 7; 25; R. 8*],” and could not conspire with one another as required under both Acts; and (2) failed to satisfy its burden of proving that personal jurisdiction over defendants exists. *R. 15*. The Magistrate Judge recommended that plaintiff’s claims under the Sherman

Act and the Louisiana Antitrust Act be dismissed with prejudice and plaintiff's remaining claims be dismissed without prejudice for lack of personal jurisdiction. *Id.*

Plaintiff filed an objection to the Report and Recommendation, conceding that the Magistrate Judge's findings were correct, but contending that the Court should dismiss Activ's federal and state antitrust claims without prejudice in light of an October 13, 2010 press release stating that "Activ International acquires NY-based Summit Hill Flavors" which it attached to the objection. *R. 17, Exh. 1.*

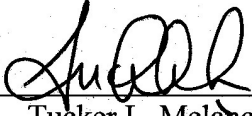
Initially, the Court notes that plaintiff's exhibit is outside of the pleading and was not part of the record upon which the Magistrate Judge considered the motions to dismiss or upon which the Report and Recommendation was based. Moreover, the Magistrate Judge cited plaintiff's Complaint alleging that "[t]he stock of ACTIV is owned by the same foreign corporation that now owns the stock of FFI/SHF," *R. 1, ¶ 7; ¶ 25*, as well as defendants' Corporate Disclosure Statement filed on August 1, 2011, representing that "FFI/SHF and ACTIV International, Inc. are wholly owned subsidiaries of Vamara Holding, S.A.," *R. 8*. Finally, plaintiff has provided nothing to support that the press release, which is more than a year old, is true or would ultimately result in a different result from that in the Report and Recommendation.

Accordingly, after an independent review of the record, including the objections filed herein, this Court concludes that the Report and Recommendation of the Magistrate Judge is correct and adopts the findings and conclusions therein as its own. It is therefore

ORDERED that the Motion to Dismiss for failure to state a claim and for lack of

personal jurisdiction filed by ACTIV International, Inc. [Rec. Doc. 9] and the Motion to Dismiss for failure to state a claim filed by Flavor and Food Ingredients, Inc. d/b/a Summit Hill Flavors [Rec. Doc. 10] are **GRANTED**, and plaintiff's federal and state antitrust claims asserted in Court II of the Complaint are **DISMISSED WITH PREJUDICE**, pursuant to Rule 12(b)(6) and all of plaintiff's remaining claims against ACTIV are **DISMISSED WITHOUT PREJUDICE**, pursuant to Rule 12(b)(2).

Lafayette, Louisiana, this 6th day of October, 2011.



Tucker L. Melançon
UNITED STATES DISTRICT JUDGE